

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 04-40114-FDS

TIMOTHY L. LaFRENIER,

Plaintiff

v.

MARY ANNE KINIREY, DANIEL
MORRISON, The CHIEF OF POLICE "John
Doe" and the TOWN OF TOWNSEND,

Defendants

PROPOSED DEFENDANT WILLIAM E.
MAY'S OPPOSITION TO PLAINTIFF'S
MOTION TO AMEND COMPLAINT

Now comes the proposed defendant, William E. May ("May"), and hereby opposes plaintiff's Motion to Amend Complaint to add him as a defendant in this matter. As grounds therefor, May states that plaintiff's motion does not comply with the requirements for amending a pleading to add a party, as set forth in Local Rule 15.1. Specifically, plaintiff proposes to add May as a defendant long after the time plaintiff could reasonably have been expected to become aware of May's identity. See Local Rule 15.1(A). Further, plaintiff failed to serve the Motion to Amend upon May at least 10 days in advance of filing said motion. See Local Rule 15.1(B).

As further grounds therefor, May relies on the within Memorandum of Reasons.

MEMORANDUM OF REASONS

1. This action arises out of plaintiff's arrest by officers of the Townsend Police Department on June 15, 2002.
2. At the time of plaintiff's arrest, May was the Townsend Chief of Police.
3. On June 14, 2004, plaintiff filed the Original Complaint in this action, asserting claims against Townsend police officers Mary Ann Kinirey and Daniel Morrison, the Town of Townsend, and "the Chief of Police, John Doe."

4. Plaintiff could have easily obtained the identity of the Townsend Chief of Police prior to filing the Original Complaint, by calling the Townsend Police Department or the Townsend Town Hall, and inquiring as to the identity of the Town's Chief of Police in June, 2002.
5. Moreover, an article about the plaintiff's lawsuit, which appeared on the front page of the October 14, 2004 edition of a local newspaper identifies May as the Chief of Police at the time of plaintiff's arrest. Exhibit A.
6. However, plaintiff did not seek to add May as a defendant in this action until March 21, 2005. May submits that, given the ease with which plaintiff could have identified him as the Townsend Chief of Police at the time of plaintiff's arrest, the Motion to Amend violates Local Rule 15.1(A), requiring that "[a]mendments adding parties shall be sought as soon as an attorney reasonably can be expected to have become aware of the identity of the proposed new party."
7. Moreover, plaintiff did not serve the Motion to Amend upon May prior to filing said motion, in violation of Local 15.1(B), providing that a motion to amend to add a new party shall be served upon the proposed new party at least 10 days in advance of filing.¹
8. Therefore, May submits that the Motion to Amend Complaint to add him as a defendant should be denied for failure to comply with the rules of this Court.

¹ Defendants note that the Scheduling Order issued by this Court sets forth April 30, 2005 as the deadline for amending pleadings; however, the docket in this matter sets forth March 21, 2005 as the deadline for amending pleadings. Exhibit B. If the latter date is operative, plaintiff would be unable to comply with the Scheduling Order if he were to re-serve and re-file the Motion to Amend in accordance with Local Rule 15.1(B).

WHEREFORE, the proposed defendant, William E. May, requests that this Honorable Court deny plaintiff's Motion to Amend Complaint.

PROPOSED DEFENDANT

WILLIAM E. MAY,

By his attorney,

/s/Joseph L. Tehan, Jr.

Joseph L. Tehan, Jr. (BBO # 494020)

Gregg J. Corbo (BBO# 641459)

Kopelman and Paige, P.C.

31 St. James Avenue

Boston, MA 02116

(617) 556-0007

247016/METG/0594

director of the Spanish American Center. "I have known Rafael for many years." Please see **RESIDENT / A5**

Man claims police abuse in lawsuit

By Matt O'Brien
mobrien@sentinelandenterprise.com

TOWNSEND — A Fitchburg man has filed suit against the town, saying Townsend police arrested him, beat him up, and charged him with drunk-driving because someone thought he looked ill.

Timothy L. LaFrenier of Fitchburg was driving along Route 13 from his workplace in Nashua, N.H., to a doctor's appointment when police pulled him over in June 2001, according to the suit he filed in U.S. District Court in Worcester.

Please see **LAWSUIT / A5**

Aubuchon Hardware president Marcus Moran Jr. and architect Alan Joslin on Wednesday.

Riverfront Park

By Evan Lehmann
elehmann@sentinelandenterprise.com

FITCHBURG — Calling Riverfront Park "a beautiful reality," Fred Healey and other members of the Riverfront Park Foundation unveiled the second phase of an ambitious three-year drive to raise \$1.5 million for the park's continuing evolution.

"This campaign is a journey through stages that we're only on our first leg of," Healey, chairman of the foundation's capital campaign, told a crowd numbering about 50 people at the Pay Club on Main Street, Wednesday morning.

Healey is president/CEO of Worker's Credit Union in Fitchburg.

The non-profit foundation aims to offset the public pricetag of the 1.6-acre central park, which is expected to cost a total of \$3.5 million.

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Marcus M. president,

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Sentinel & Enterprise

Candidate Debates

State Rep

- State Rep. James Eldridge, T.J. Dyer face off at 6 p.m. Oct. 18 at Lunenburg High School

State Senate

- State Sen. Robert Antonioni, David Schneider, Richard Zitka face off at 6:30 p.m. Oct. 26 at Fitchburg State College, Percival Hall

Bush, Kerry trade

President says challenger's health care an "empty promise" that will cost \$5 trillion

By Mary Dalrymple
The Associated Press

TEMPE, Ariz. — Sen. John Kerry said Wednesday that 5 million people have lost their health care in the last four years and accused President Bush of "turning his back on the wellness of America." The Republican incumbent responded that his rival's plan to expand coverage was an "empty promise" that would cost taxpayers \$5 trillion.

"It's called bait-and-

switch," Bush said of proposal to offer cover millions of Americans lack it.

The exchange came moments into the final debate of a race for the House that has grown closer in recent days and the last time Bush's rival will face off Election Day on Nov.

Kerry and the president also clashed over job and the war in Iraq.

Please see **DEBATE /**

 **Switch to Enterprise**
Fitchburg: 978-34

SENTINEL & ENTERPRISE

FROM PAGE ONE

★ THURSDAY, OCTOBER 14

Athol man killed in Tuesday's four-vehicle crash was former Leominster resident

RESIDENT / From Page A1
 years. He worked with us at the agency. He was a good friend of this agency."

Lastimer said Garcia was a hard worker, and he was employed at Sportmen's Plastic in Leominster for several years.

Garcia, 49, originally from Puerto Rico, lived with his grandmother in Athol.

"He had no children, but he was part of a big family," she said. "(Garcia) will be very missed."

Garcia was also married. Garcia was driving a station wagon when it hit an 18-wheel tractor trailer, causing the car to fly off the road and break through a chain-linked fence.

He was life-flighted to UMass Memorial Medical Cen-

ter, where he later died.

Miguel Toledo, who was a passenger in the station wagon, continues to fight for his life at UMass.

Toledo, 64, was also life-flighted to UMass on Tuesday, and he was downgraded to serious condition on Wednesday.

Lastimer said she and others at the agency know Toledo and his family.

"He's a good man," she said. "We are praying."

Gardner police and state police are still investigating the cause of the accident, which injured 11 other people.

"At this point, everything is still up in the air," said Gardner Police Officer Roger Cormier. "It takes time of speed, that's being investigated by the State Police reconstruction team."

The tractor trailer flipped onto its left side, spilling its load of sand and gravel onto the road in front of the Gardner Highway Department, and crushing the driver's side of an oncoming Mountbushett Area Regional Transit Authority bus.

Police say the truck was traveling east on Route 2A when it collided with a black Chevrolet Celebrity station wagon that entered the intersection from Maraca Drive.

After the initial collision, the truck veered into a westbound MART bus.

The truck spilled more than 8000 gallons of sand onto Route 2A and about 30 gallons of diesel fuel.

W.J. Graves Construction, the Templeton company that owns the truck, hired a private

company to clean up the spill, said Ed Coletta, spokesman for the state Department of Environmental Protection.

"Once they uprighted the truck, they pumped out the tanks to prevent further spillage," Coletta said.

Coletta said the DEP found no impact on any catch basins along the road, but was unsure whether the large amount of sand was harmful.

"The fact that there was so much sand there, it may have protected the basins," he said. "It was all contained on the pavement and the sand."

The station wagon broke through a fence and hit a parked van occupied by two inmates, who were participating in community service cleanup with several others

In lawsuit, man claims police assaulted him, charged him with drunken driving because someone thought he was

LAWSUIT / From Page A1

A fellow motorist spotted LaFrenier driving just north of the police station and reported him to police because he "did not look well," wrote Carol T. Fitzpatrick of Leominster, the man's lawyer.

LaFrenier has sued the two police officers who responded to the report, Mary Ann Kintney, 30, is a reserve officer, and

Daniel Morrison, as well as the police chief at the time, William May, and the town itself.

The suit seeks for compensation and punitive damages, but does not specify an amount.

Town Administrator Greg Barnes said the town received the lawsuit Tuesday.

He said he would refer the suit to the town's insurer and lawyer. No one has made a formal

response to the complaint in federal court.

The suit follows a complaint LaFrenier lodged against the town in Oct. 2002. The town responded to that complaint by saying the police department and police officers acted properly in the incident, according to the suit. The suit states "Kintney and Morrison did not smell alcohol on the breath of the plaintiff or

about the plaintiff. There was no alcohol in the plaintiff's car. ... (He) had consumed no alcohol on the day of his arrest."

"His reading on (a breathalyzer) test was 0.00 and 0.00," the suit states.

Vittorio writes that a blood test found no drug use, though it did "reveal a white blood count indicative of a viral infection." The suit states the police

through the Highway Department.

Shawn Tegan, 23, who is currently serving time at the correctional facility in Gardner, was the only inmate injured. Garcia and Toledo were not wearing seat belts at the time of the crash, Cormier said.

Norberto J. Torres, 34, of Gardner, was also riding in the station wagon with his two children, a 9-year-old boy and 10-year-old girl, Cormier said.

Torres and his daughter were both in stable condition at Heywood Hospital on Wednesday. The 9-year-old boy was released from the hospital.

Four elderly Gardner residents were passengers on the MART bus at the time of the accident, including Emilia Galant, 88, Frank Carapinaki, 85,

Constance Fournier, 84, Oretta Kemp, 73.

Carapinaki was in a tention at Heywood Hospital. Kemp was in stable condition and released. Bus driver Jean Carr also recovering from a l his left leg Wednesday. Philip Rocco, general manager of MART.

Jamie Bernal, 40, of was driving the W.J. Graves Construction truck. James Fletcher, manager of W.J. Graves Construction, did not return phone calls o day or Wednesday.

Cormier confirmed M. and the Occupational Safety and Health Administration is conducting investigations in tion to police.

The suit states that th day, Kintney applied to a licty of Motor Vehicles to LaFrenier's driver's licen suspended. The K&V did suspend his license.

The suit states police m arrest without probable ca used excessive force, denied medical treatment at the a and lodged charges against they knew to be false.

FRIDAY & SATURDAY, SHOP BOTH DAYS 8AM-11PM

OPEN MONDAY

madei - Docket Report

Page 1 of 2

**United States District Court
District of Massachusetts (Worcester)
CIVIL DOCKET FOR CASE #: 4:04-cv-40114-FDS**

LaFrenier v. Kinirey et al
Assigned to: Judge F. Dennis Saylor, IV
Cause: 42:1983 Civil Rights Act

Date Filed: 06/14/2004
Jury Demand: Defendant
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Date Filed	#	Docket Text
06/14/2004	<u>1</u>	COMPLAINT Filing fee: \$ 150, receipt number 404347, filed by Timothy L. LaFrenier.(Shattuck, Deborah) (Entered: 06/14/2004)
06/14/2004		Summons, LR 4.1, Waiver, MCF Issued as to Mary Anne Kinirey, William E. May, Daniel Morrison, Townsend, Town of. (Shattuck, Deborah) (Entered: 06/14/2004)
06/18/2004	<u>2</u>	Notice of Reassignment. Case reassigned from Judge Gorton to Judge F. Dennis Saylor, IV upon appointment to the bench. Notice sent to counsel. (Shattuck, Deborah) (Entered: 06/21/2004)
10/29/2004	<u>3</u>	ASSENTED TO MOTION for Extension of Time to November 26, 2004 to File Answer re <u>1</u> Complaint by Mary Anne Kinirey, Daniel Morrison, Townsend, Town of, c/s.(Hassett, Kathy) (Entered: 10/29/2004)
10/29/2004	<u>4</u>	CERTIFICATE OF CONSULTATION by Joseph L. Tehan Jr. on behalf of Mary Anne Kinirey, Daniel Morrison, Townsend, Town of, c/s. (Hassett, Kathy) (Entered: 10/29/2004)
10/29/2004		Judge F. Dennis Saylor IV: Electronic ORDER entered granting <u>3</u> Motion for Extension of Time to Answer for Mary Anne Kinirey, Daniel Morrison, and Townsend, Town of. (cc/cl) (Castles, Martin) (Entered: 10/29/2004)
12/01/2004	<u>5</u>	ANSWER to Complaint with Jury Demand by Mary Anne Kinirey, Daniel Morrison, Townsend, Town of, c/s.(Hassett, Kathy) (Entered: 12/01/2004)
12/01/2004	<u>6</u>	CERTIFICATION pursuant to Local Rule 16.1 by Mary Anne Kinirey, c/s.(Hassett, Kathy) (Entered: 12/01/2004)
12/01/2004	<u>7</u>	CERTIFICATION pursuant to Local Rule 16.1 by Daniel Morrison, c/s. (Hassett, Kathy) (Entered: 12/01/2004)
12/01/2004	<u>8</u>	CERTIFICATION pursuant to Local Rule 16.1 by Townsend, Town of, c/s.(Hassett, Kathy) (Entered: 12/01/2004)
01/28/2005	<u>9</u>	NOTICE of Scheduling Conference Scheduling Conference set for 2/25/2005 11:00 AM in Courtroom 2 before Judge F. Dennis Saylor IV. (Castles, Martin) (Entered: 01/28/2005)

madei - Docket Report

Page 2 of 2

02/08/2005		NOTICE OF RESCHEDULING: Reset Hearings: Scheduling Conference reset for 3/7/2005 11:00AM in Courtroom 2 before Judge F. Dennis Saylor IV. (Castles, Martin) (Entered: 02/08/2005)
02/28/2005	<u>10</u>	JOINT STATEMENT of counsel <i>re: Scheduling - Local Rule 16.1(D)</i> . (Corbo, Gregg) Additional attachment(s) added on 3/3/2005 (Hassett, Kathy). (Entered: 02/28/2005)
03/04/2005	<u>11</u>	NOTICE of Appearance by Sean J. Gallagher on behalf of Timothy L. LaFrenier (Hassett, Kathy) (Entered: 03/04/2005)
03/07/2005		Electronic Clerk's Notes for proceedings held before Judge F. Dennis Saylor IV: Scheduling Conference held on 3/7/2005. Case called, Counsel (Gallagher/Tehan) appear for scheduling order, Scheduling order to issue (Court Reporter Kusa-Ryll.) (Castles, Martin) (Entered: 03/07/2005)
03/08/2005	<u>12</u>	Judge F. Dennis Saylor IV: Electronic ORDER entered. SCHEDULING ORDER: Final Pretrial Conference set for 3/27/2006 03:00 PM in Courtroom 2 before Judge F. Dennis Saylor IV. Status Conference set for 10/20/2005 03:15 PM in Courtroom 2 before Judge F. Dennis Saylor IV. Amended Pleadings due by 3/21/2005. Discovery due by 10/14/2005. Joinder of Parties due by 3/21/2005. Motions due by 2/3/2006.(Castles, Martin) (Entered: 03/08/2005)
03/21/2005	<u>13</u>	MOTION to Amend 1 Complaint by Timothy L. LaFrenier, c/s. (Attachments: # 1 Amended Complaint)(Hassett, Kathy) (Entered: 03/21/2005)

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